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WORK ZONE SAFETY

The following comments are an appraisal of the current situation as I see it, acknowledging, as a former Commissioner of the Texas Department of Transportation and a past Administrator of the Federal Highway Administration, that political and practical realities limit transportation agencies in their attempts to ensure safety in work zones, even as the number of construction projects increase exponentially amidst ever-increasing traffic.

Reviewing the adequacy of Work Zone Safety regulations has merit. For the sake of brevity as well as clarity, this paper poses three questions: (1) Are our present work zone policies effective; (2) Should a new National Work Zone policy be established by FHWA regulation; and (3) If a new Regulation is warranted, what should be its major components?

(1) Are our present work zone policies effective? One need only skim the ANPRM's comprehensive *Statement of the Problem*, or Administrator Peters' recent testimony before the House Transportation and Infrastructure's Subcommittee on Highways and Transit, to see that the FHWA itself realizes that its current work zone procedures are grossly inadequate. Additionally, the chief executives of most state Departments of Transportation have publicly acknowledged their concern over the burgeoning numbers of injuries and fatalities at construction work zones.

As iterated in the ANPRM, "From 1992 to 1999, about 106 to 136 highway workers died each year in road construction activities....On average, 23 percent of those fatalities were due to workers being stuck by vehicles or mobile equipment in roadways." Note that those figures were for fatalities only, and did not reference the thousands of injuries. More significantly, in another statement the FHWA noted that "Work zone fatalities reached a high of 872 in 1999, while 39,000 Americans were injured in work zone related crashes in the same year." Testifying before Congress just a couple of months ago, AASHTO President Brad Mallory asserted that last year, in 2000, **work zone fatalities skyrocketed to 1,093.**

Obviously, our present regulations are grossly inadequate. Without significantly improved work zone requirements, the statistics can only grow worse.

(2) Should a National Work Zone policy be established by FHWA regulations, one that would apply to every road that is even partially funded by Federal Highway Trust Fund monies? To a large extent, yes, but not exactly. A new National Policy is needed, but one that recognizes state government sovereignty in controlling state-only responsibilities, consistent with the national interest.

The Congress, in legislation agreed to by state governments, defined the National Highway System as being a national priority. By definition, then, roads not a part of the NHS are not considered to be of high national concern, thus jurisdiction over them is therefore best left to the discretion of the states. Accordingly, only those roads that are a part of the National Highway System should be subject to any new National Work Zone policy as articulated in new FHWA regulations. As new FHWA regulations prove successful in minimizing injuries and congestion problems on the NHS, the responsible leaders of the state departments of transportation will, of their own volition, implement similar procedures appropriate to their jurisdictions without any federal mandate.

(3) If a new Regulation is warranted, what should be its primary goals and how should they be accomplished?

The foremost objective should of course be to ensure the safety of motorists and construction workers alike in work zones, but minimizing congestion delays that significantly contribute to many of those injuries is likewise important. To that end, wherever possible contractors should be required to provide for the positive separation of motorists from the construction workers, and depending upon the ADT of the road under construction, consideration should be given to requiring that all lanes be open to traffic during peak travel periods.

I travel frequently throughout the country, when by car most often on Interstates, and am constantly astonished at what is encountered: one-lane traffic backed up for miles, often with only intermittent construction activity; in one state forty-six minutes to cover three miles, and in another state more than thirty minutes to travel four miles. And accidents galore. As road reconstruction increases, which it surely will, unless a new policy is implemented the situation can only grow worse, road rage more severe, and fatalities more prevalent.

In some instances, employing innovative measures to expedite construction and minimize accident causation will mean greater direct costs to DOTs, but reducing the *indirect* costs stemming from that congestion and those accidents will mean that the tax-paying motoring public - our customers - will actually incur lower costs over all. If in awarding contracts the DOTs will do so on the basis of the lowest total costs, including user costs, even without calculating the costs of the human suffering from the thousands of injuries and deaths, it can be demonstrated that implementing effective work zone safety procedures will prove to be economically desirable. Roads have values, else they

wouldn't be built. When the public is denied adequate access to a road, the public incurs not only accidents but monetary loss; when it has access to that road due to early completion, it receives substantial benefit. Experts assert that the cost of delays, congestion, has reached astronomical proportions. Consideration should be given to requiring that all lanes be open during peak traffic periods, based upon ADT levels. Accelerating construction by expanding and protecting the work area during off-peak traffic periods, and including provisions to make it more attractive for contractors to modify work schedules to accommodate traffic demands, would also be cost-effective. As a general rule for NHS roads, contractors should receive incentives for early completion of the project and maintenance of ADTs, and penalties for late completion and lower ADTs.

Some critics of DOT practices, and of highway contractors specifically, point to the number of catastrophic occurrences in work zones as proof that those interests are less concerned about lives and injuries than they are about covering the countryside with concrete. That this accusation is without merit is evidenced by the letter the president of The Associated General Contractors of America, one of the nation's foremost organizations of road builders, sent to the president of AASHTO on October 21, 2002. The AGC president, Robert J. Desjardins, wrote, "Associated General Contractors of America (AGC) believes that a national policy requiring the use of positive barriers when road construction is being performed under traffic would have an immediate and lasting impact on reducing worker injuries and deaths. The use of positive barriers should be the standard, and deviations from this standard should be considered only if justified." Safety, not just of workers but of the motoring public as well, is of major concern to DOTs as well as to contractors.

Inevitably, there will be those who will oppose creating any new regulation, who find it more convenient for their personal interests to maintain the status quo. They will object on the basis of unnecessarily adding costs to construction projects, an objection that cannot be supported by any objective review of the facts. What is the value of a life, what do injuries cost? An EPA cost-benefit analysis estimates that society is willing to pay \$ 7 million to prevent a death. If that is a realistic figure, and even assuming that injuries would entail substantially less than that amount, would not contractors, DOTs, and society in general be far better served in financial terms alone if truly effective safety measures in work zones are instituted? Not insignificant is that the DOTs themselves, their reputations tarnished of late by constant accusations of being insensitive to the inconvenience they impose on society, would once again be accorded the public esteem they deserve.

## Conclusion

Any objective analysis of available data can lead to but one conclusion: it is way past time to merely talk about work zone deficiencies; they must be forcefully addressed. Federal and state highway agencies annually spend huge sums to redress real and perceived problems in every aspect of their operations, yet they seem hesitant to forcefully address the solvable problems inherent in construction work zones. It

definitely is possible to ensure the movement of traffic through work zones without endangering lives. Technologies are available; the only thing lacking is the will to do so. Contractors should of course be paid on the basis of square yards of pavements laid, but they should be further rewarded for doing so as rapidly and as safely as possible. Any new Regulation that accomplishes these ends will truly serve the national interest. It is obvious that the FHWA must take the lead in addressing this critical issue.

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